
Appeal Decision

Site visit made on 29 June 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/L2250/W/21/3284932

TCM House, Trinity Road, Folkestone CT20 2HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
 - The appeal is made by Mike Harry against the decision of Folkestone and Hythe District Council.
 - The application Ref 21/1644/FH/PA, dated 30 July 2021, was refused by notice dated 13 September 2021.
 - The development proposed is described as the conversion of the application site from Class B1(a) office use to create 27 new C3 residential units with parking for 49 cars (inclusive of 9 disabled parking spaces and 4 electrical charge point parking spaces) and secure, sheltered storage for 72 cycles.
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Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the conversion of the application site from Class B1(a) office use to create 27 new C3 residential units with parking for 49 cars (inclusive of 9 disabled parking spaces and 4 electrical charge point parking spaces) and secure, sheltered storage for 72 cycles at TCM House, Trinity Road, Folkestone CT20 2HB in accordance with the application ref 21/1644/FH/PA dated 30 July 2021 and the plans and details submitted with it.

Applications for Costs

2. Applications for costs were made by both Mike Harry against the decision of Folkestone and Hythe District Council and by Folkestone and Hythe District Council against Mike Harry. These applications are the subject of separate decisions.

Procedural Matters

3. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force and amended various use classes. This included use Class B1, which has been subsumed into the new Use Class E. However, the amendment included transitional arrangements for the period between 1 September 2020 and 31 July 2021. These specified that any references to uses or use classes specified in the Schedule to the UCO should be read as meaning the uses or use classes that applied on 31 August 2020 for the purposes of making a prior approval

application. As such, given that the application was submitted prior to 31st July, the previous use classes apply.

Background and Main Issue

4. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order (as it applied on 31st August 2020), to a use falling within Class C3 (dwellinghouses) of that Schedule is permitted by Schedule 2, Part 3, Class O of the GPDO subject to limitations which are specified at paragraph O.1, and conditions which are set out at paragraph O.2. Paragraph O2.(2)(b) of the GPDO sets out that the developer must apply for a determination on or before 31 July 2021.
5. It is common ground between the parties that the application was submitted electronically via the Planning Portal at approximately 22.00hrs on Friday 30 July 2021. It is also common ground that the application was accepted as valid on the next working day (2 August 2021). However, the Council state that in accordance with Section 336 (4A) of the Act, the application was received outside of business hours and therefore the application was not taken to have been received until the next working day. The main issue is therefore whether or not the application was applied for on or before 31 July 2021.

Reason

6. Paragraph O2.(2)(b) of the GPDO uses the word "apply" not received. A clear distinction can be made between these words. The Oxford English Dictionary (OED) defines "apply" as a verb and *a formal request, usually in writing, for something*. In this case it is reasonable to infer that the appellant therefore applied before the 31 July 2021 regardless of when it was received.
7. The word apply is critical in this case and while the Council refer to Section 336 (4A) of the Act, the language used in this section the Act is "received". Therefore, while the application may have been officially 'received' on the 2 August 2021, it appears to me that the appellant 'applied' on the 30 July 2021.
8. I have also considered the explanatory memorandum to the Act. In this case the memorandum, at paragraph 7.10, includes reference to applications for prior approval being 'made'. The word 'received' is again absent from this wording and 'made' is defined in the OED as the past tense of 'make' which is to create or prepare something. On this reasoning the appellant did prepare their application and applied before the 31 July 2021 irrespective of when it was 'received'.
9. In light of my reasoning above, I am satisfied that the application complies with paragraph O2.(2)(b) of the GPDO.

Other Matters

10. The provisions of the GPDO require the local planning authority to assess the proposed development in respect of transport and highways impacts of the development, contamination risks on the site, flood risks on the site, impacts of noise from commercial premises on the intended occupiers of the development and the provision of adequate natural light in all habitable rooms of the dwellinghouses. The Council has raised no objection on these grounds. I have no reason to conclude to the contrary.

11. The Highway and Transportation Authority raise no objection. A Transport Assessment has also been submitted with the appeal which finds the proposed development would cause minimal traffic impacts to the local highway network, both in terms of trips arising or parking demand. In the absence of compelling contrary evidence, I am satisfied that no adverse impacts would arise in this regard.
12. Concern about noise has been submitted however, the appeal building is within a mixed residential / office area. While a police station is opposite, I have not been provided with evidence that the adhoc nature of siren usage would be adversely detrimental to future occupiers of the proposed development.
13. Concerns have been raised about privacy, noise arising from future occupiers of the appeal property, amenity space, impact on infrastructure / services, the loss of office floorspace, lack of landscaping, climate change and suggestions for alternative uses have also been made. While these concerns and suggestions are noted, Class O of the GPDO does not permit an assessment thereof or to specifically weigh potential alternative uses.

Conditions

14. The Council has not recommended any conditions in the event that the appeal is allowed. Nevertheless, the development must adhere to the conditions set out at Paragraph O.2.(2), and the provisions at Paragraph W(12) of Part 3, which requires, amongst other things, that development permitted under Class O is completed within a period of 3 years starting with the prior approval date, and that the development must be carried out in accordance with the approved details.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

N Praine

INSPECTOR